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State of New Mexico
Office of the Governor

Bill Richardson
Governor

February 6, 2008

Hon. Paul A. Crotty
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 735
New York, NY 10007

VIA UPS OVERNIGHT

Re: State of New York, et al v. United States Department of Health and Human Services, 07-CV-8621 (PAC)

Dear Judge Crotty:

Pursuant to your Honor's rules of practice, the State of New Mexico hereby submits this pre-motion letter seeking leave to file memorandum of law as an *amicus curiae* in the above-captioned case. Plaintiffs, the State of New York, the State of Illinois, the State of Washington and the State of Maryland, have given their consent for the State of New Mexico to participate in this case as an *amicus curiae*. The Defendant, the United States Department of Health and Human Services, has given their consent for the State of New Mexico to participate in this case as an *amicus curiae*, conditioned upon the Court requiring all *amicus curiae* file consolidated briefs.

As your Honor is aware, the Plaintiffs in the above referenced case seek to challenge an August 17, 2007 letter sent from the United States Department of Health and Human Services ("HHS"), through its Centers for Medicare and Medicaid Services ("CMS"), regarding the State Children's Health Insurance Program ("SCHIP"). The letter was sent without first publishing a notice in the Federal Register or giving any affected party an opportunity to comment. The letter advised that the CMS would no longer allow states to expand SCHIP coverage to children in families with incomes above 250% of the Federal Poverty Level ("FPL") unless they first met stringent new requirements and advised states of certain "crowd-out" procedures that states would need to include in their plans in the future if they opt to extend coverage at levels above 250% of the FPL.

MEMO ENDORSED

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The State of New Mexico will be able to provide assistance to the Court on the issues raised in this lawsuit. New Mexico has a significant interest in the federal government allowing states to administer their SCHIP coverage as they determine to be appropriate, without needing to meet the stringent new requirements such as mandatory waiting periods and minimum enrollments, imposed by the August 17, 2007 letter. Further, the State of New Mexico has a significant interest in the federal government following the notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. Section 553(b), (c), when it imposes new, stringent requirements upon the how states implement their SCHIP. The August 17, 2007 letter cannot avoid its rulemaking requirements by labeling the letter a "general statement of policy" when, in reality, the letter imposes strict new requirements on the SCHIP that the CMS intends to enforce upon the states.

~~X~~ For these reasons, the State of New Mexico respectfully requests that your Honor grant it permission to file memorandum of law as an *amicus curiae*.

Sincerely,



Justin Miller
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State of New Mexico

cc: John Schwartz, Esq.
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*Permission is granted and the
submission is limited to 20 pages.*

* SO ORDERED: 2/7/08

Paul M. Crotty

HON. PAUL A. CROTTY
UNITED STATES DISTRICT JUDGE